

**COMMUNITY VOCATIONAL** )  
**SCHOOLS OF PITTSBURGH, INC.**, a )  
corporation, individually and as the )  
representative of a class of similarly situated )  
persons, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
**MILDON BUS LINES, INC.**, a Pennsylvania )  
corporation, )  
) )  
Defendant/ Third Party Plaintiff, )  
) )  
v. )  
) )  
**CAROLINE ABRAHAM** and **JOEL** )  
**ABRAHAM**, )  
) )  
Third Party Defendants. )

CIVIL ACTION NO. 09-1572

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Three factors control whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct.

Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000) (citing United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984)). "The district court has the discretion to enter default judgment, although entry of default judgments is disfavored as decisions on the merits are preferred." Super 8 Motels, Inc. v. Kumar, No. 06-5231, 2008 WL 878426, at \*3 (D.N.J. Apr. 1, 2008) (citation omitted). Courts are less inclined to follow Chamberlain where a defendant has been in default and has failed to respond to a motion for default. Broadcast Music, Inc. v. George Moore Enters., 184 F.Supp.3d 166, 170 (W.D. Pa. 2016).

By order dated February 9, 2018, the court granted summary judgment in favor of defendant Mildon and against plaintiff Community Vocational Schools of Pittsburgh, Inc., which would appear to moot Mildon's requested relief against Caroline Abraham and Joel Abraham with respect to the claims for contribution and indemnity, but did not resolve the claims for common law fraud and negligence. The court will deny Mildon's present motion for default judgment, and will permit a renewed motion for default judgment to be filed subsequent to the court setting and holding a status conference after the deadline for filing a motion to substitute a new plaintiff as class representative has expired.

DATED: February 9, 2018

BY THE COURT:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
Chief United States District Judge